

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY WARBINGTON and,)
CLARA WARBINGTON,)
)
Plaintiff,)
)
v.) CIVIL ACTION FILE
) NO:
WAL-MART STORES, INC.,)
)
Defendant.)

NOTICE OF REMOVAL

COMES NOW, Defendant Wal-Mart Stores, Inc. (hereinafter "Defendant"), erroneously named and joined, the only correct designation being Wal-Mart Stores East, LP, in the above-captioned matter, by and through its counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiffs filed suit in the State Court of DeKalb County, Georgia, which is within the Atlanta Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 11A36836-4. Plaintiffs' claims against Defendant include allegations of negligence.

2.

Plaintiffs filed the Complaint on or about May 11, 2011. Defendant received service of summons and a copy of the Complaint on May 16, 2011. Defendant files this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant Wal-Mart Stores, Inc. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter.

4.

Plaintiffs Tony Warbington and Clara Warbington are citizens of the State of Georgia.

5.

Complete diversity of citizenship exists between Plaintiffs and Defendant.

6.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiffs and Defendant.

7.

Plaintiffs allege that Plaintiff Tony Warbington “received severe injuries to his body and mind.” See Plaintiffs’ Complaint ¶17. Plaintiffs allege that Plaintiff Tony Warbington “has suffered and continues to suffer both physical and mental pain and suffering.” See id., ¶17. As a result of this incident, Plaintiffs claim that they “have incurred medical expenses to date, and will continue to incur medical expenses in the future.” See id., ¶18. Plaintiffs claim that “Plaintiff has presently incurred medical bills in excess of \$50,000.” See id., ¶19. Plaintiffs also claim that, as a result of the subject incident, Plaintiff Tony Warbington “has not been able to work and has incurred lost wages and will continue to incur lost wages and loss of earning capacity into the future.” See id., ¶20. In the Complaint, Plaintiffs claim that as a result of the subject accident, “Plaintiff Clara Warbington sustained a loss of consortium of her spouse including, but not limited to, his unimpaired aid, assistance, affection, comfort, society, companionship, company, love and other conjugal fellowship and will likely continue to sustain such loss in the future.” See id., ¶23.

8.

Plaintiffs’ claim for damages exceeds the \$75,000 jurisdictional threshold.

9.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendant has attached as

Exhibit "A" copies of all the pleadings that were provided to and served upon Defendant, including copies of all pleadings that have been filed to date in the State Court of DeKalb County, Georgia for the above-styled case.

10.

Pursuant to 28 U.S.C. § 1446, Defendant is not required to file a removal bond.

11.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

12.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of DeKalb County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendant prays that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

McLAIN & MERRITT, P.C.

/s/ Albert J. DeCusati

Albert J. DeCusati

Georgia Bar No. 215610

Ashley C. Alexander

Georgia Bar No. 141360

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing
NOTICE OF REMOVAL upon Plaintiff by depositing same in the United States
Mail in envelopes with sufficient postage affixed thereon to insure delivery addressed
as follows:

Earnest Redwine, Jr., Esq.
The Law Offices of Earnest Redwine, Jr., LLC
730 Peachtree Street
Suite 560
Atlanta, Georgia 30308

This 7th day of June, 2011.

McLAIN & MERRITT, P.C.

/s/ Albert J. DeCusati

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